

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 906 of 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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SHANKARLAL KANAIYALAL JOSHI  
VERSUS  
JAYANTIALL VITHALDAS PINDIWALA

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Appearance:

MR RS SANJANWALA for the Petitioner  
MS MAMTA VYAS for the Respondent

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision : 28/03/2000

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. The plaintiff - respondent filed Small Causes Suit NO. 244 of 1991 against the petitioner for his eviction from the suit premises. This suit was decreed on 8-2-1994 by the Small Causes Court. It is the case of the petitioner that he came to know about this decree only on 23-12-1994 when the bailiff came to take the possession of the suit premises and took the possession. The petitioner filed an appeal against this judgment and decree in the court of District Judge, Surat. As the appeal was barred by limitation, an application has been filed for condonation of delay which came to be rejected under the order dated 19th April, 1995 of the Assistant Judge, Surat. Hence, this revision application.

3. Learned counsel for the petitioner has failed to make out any case for interference of this court in the impugned order. The court below has recorded a finding of fact that the summons of the suit was duly served upon the defendant - petitioner and other finding of fact has been recorded that the defendant - petitioner had knowledge of the filing of the suit. The suit has been filed in the year 1991 and decree came to be passed in the year 1994. After long time of passing of the decree an appeal has been filed on 18th January, 1995. The possession of the suit premises has been taken on 23rd December, 1994 and thereafter appeal has been filed after long time. These are the findings of facts and unless the same are perverse, no interference can be made. Learned counsel for the petitioner has failed to show any perversity in these findings. The condonation of delay in filing of appeal is not as a matter of course or right. Unless sufficient cause is made out for this inordinate delay the court is not under any obligation to condone the delay. Condoning delay in filing of appeal is otherwise a discretionary power and where in the facts of the case, this discretion if is not exercised in favour of the petitioner, no exception can be made. This case does not fall under any of the clauses (a), (b) and (c) of subsection (1) of section 115, C.P.C..

4. As a result of the aforesaid discussion, this revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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